

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 724.)

#### EFFECTIVE DATE

Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

### § 406. Postal services at Armed Forces installations

(a) The Postal Service may establish branch post offices at camps, posts, bases, or stations of the Armed Forces and at defense or other strategic installations.

(b) The Secretaries of Defense and Transportation shall make arrangements with the Postal Service to perform postal services through personnel designated by them at or through branch post offices established under subsection (a) of this section.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 724.)

#### EFFECTIVE DATE

Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

### § 407. International postal arrangements

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services and shall have the power to conclude postal treaties, conventions, and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with the views submitted by the Commission pursuant to paragraph (1), except if, or to the extent, the Secretary determines, in writing, that it is in the foreign policy or national security interest of the United States to ensure consistency with the Commission's views. Such written determination shall be provided to the Commission together with a full explanation of the reasons thereof, provided that the Secretary may designate which portions of the determination or



explanation shall be kept confidential for reasons of foreign policy or national security.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) In this subsection, the term “private company” means a private company substantially owned or controlled by persons who are citizens of the United States.

(2) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(3) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary’s control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 724; Pub. L. 105-277, div. A, § 101(h) [title VI, § 633(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-523; Pub. L. 109-435, title IV, § 405(a), Dec. 20, 2006, 120 Stat. 3229.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of enactment of this subsection, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 109-435, which was approved Dec. 20, 2006.

#### AMENDMENTS

2006—Pub. L. 109-435 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d)

relating to responsibilities of the Secretary of State and the Postal Service for international postal arrangements.

1998—Pub. L. 105-277 substituted “International Postal Arrangements” for “International postal arrangements” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Postal Service, with the consent of the President, may negotiate and conclude postal treaties or conventions, and may establish the rates of postage or other charges on mail matter conveyed between the United States and other countries. The decisions of the Postal Service construing or interpreting the provisions of any treaty or convention which has been or may be negotiated and concluded shall, if approved by the President, be conclusive upon all officers of the Government of the United States.

“(b) The Postal Service shall transmit a copy of each postal convention concluded with other governments to the Secretary of State, who shall furnish a copy of the same to the Public Printer for publication.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-435, title IV, § 405(b), Dec. 20, 2006, 120 Stat. 3232, provided that: “Notwithstanding any provision of the amendment made by subsection (a) [amending this section], the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

“(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

“(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.”

#### EFFECTIVE DATE

Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

#### TRANSFER OF FUNDS TO STATE DEPARTMENT

Pub. L. 105-277, § 101(h) [title VI, § 633(d)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-524, provided that: “In fiscal year 1999 and each fiscal year hereafter, the Postal Service shall allocate to the Department of State from any funds available to the Postal Service such sums as may be reasonable, documented and auditable for the Department of State to carry out the activities of Section 407 of title 39 of the United States Code.”

#### § 408. International money-order exchanges

The Postal Service may make arrangements with other governments, with which postal conventions are or may be concluded, for the exchange of sums of money by means of postal orders. It shall fix limitations on the amount which may be so exchanged and the rates of exchange.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 725.)

#### EFFECTIVE DATE

Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

#### § 409. Suits by and against the Postal Service

(a) Except as otherwise provided in this title, the United States district courts shall have original but not exclusive jurisdiction over all

POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT

APRIL 28, 2005.—Ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 22]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 22) to reform the postal laws of the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Postal Accountability and Enhancement Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.



competition prohibitions and eliminates sovereign immunity protection from suits in Federal court for violations of Federal law. The amended section 409 allows injunctive relief against officers and employees of the Postal Service in case of violation of the antitrust laws, while the Postal Service itself would be subject to all available remedies.

Fourth, the amendment would require the Postal Service to consider local zoning, planning, or land use regulations and building codes when constructing or altering buildings.

As amended, section 409 further requires the Postal Service to represent itself in most legal proceedings permitted by the amendment as well as in cases involving administrative subpoenas issued by the Postal Regulatory Commission and appeals of decisions by the Commission or the Governors. The amendment requires that judgments arising out of activities of the Postal Service must be paid by the Postal Service, and judgments arising out of violations of law involving competitive products must be paid from revenues from competitive products.

*Sec. 305. International postal arrangements*

Section 305 of the bill replaces section 407 of title 39. Section 407 deals with international postal arrangements.

New subsection 407(a) establishes a policy framework for future international postal agreements that stresses separation of regulatory and operational functions.

Subsection 407(b) vests the Secretary of State with authority to lead U.S. delegations in intergovernmental meetings devoted to postal matters. The Secretary is barred from concluding agreements with respect to any competitive product that give preference to any entity, either public or private, including the Postal Service. The subsection provides the Secretary in carrying out his responsibilities under this section shall maintain continuing liaison with other federal agencies and the Congress, and appropriate liaison with the Postal Service and affected members of the public. The subsection further declares that the Secretary of State shall establish an advisory committee, under the Federal Advisory Committee Act, to help perform such functions as the Secretary considers appropriate in connection with the necessary coordination and liaison with entities in the public and private sectors as the Secretary develops U.S. foreign policy related to international postal services and other international delivery services.

Subsection 407(c) provides that, before concluding an international agreement that establishes a rate or classification for a market-dominant product, the Secretary shall request a decision from the Postal Regulatory Commission to determine whether the proposed rate or classification is consistent with the Commission standards and criteria for market dominant products. The Secretary must ensure that international agreements are consistent with the Commission's decision except to the extent that modification may be required by considerations of foreign policy or national security.

Subsection 407(d) authorizes the Postal Service to enter into agreements or contracts as it deems appropriate for international postal services or other international delivery services without the consent of the Secretary as long as any agreements with agencies

or subsidiaries of foreign governments are contractual in nature and do not purport to be international law. The Postal Service must notify the Secretary and the Commission of agreements with agencies of foreign governments.

In light of studies conducted by the General Accounting Office and the former U.S. Customs Service, subsection 407(e) requires the Bureau of Customs and Border Protection of the Department of Homeland Security to afford non-discriminatory access to U.S. customs procedures for both the Postal Service's Competitive products and similar products of U.S.-owned private carriers. Since some foreign governments currently limit access to simplified customs procedures to government post offices—thus discriminating between the Postal Service and U.S. private carriers—the subsection requires the Secretary of State “to the maximum extent practicable” to negotiate with other countries to make available customs procedures that do not discriminate between the Postal Service and U.S. private carriers while fully meeting the needs of all types of American shippers.

#### *Sec. 306. Redesignation*

Section 306 redesignates a subchapter heading in chapter 36 of title 39 to reflect various amendments in the bill.

### TITLE IV—GENERAL PROVISIONS

#### *Sec. 401. Qualification requirements for Governors*

Section 401 of the bill amends section 202 of title 39. Section 202 establishes the Board of Governors and provides that the nine Governors shall represent the public interest generally. The amendment adds a requirement that the President shall select at least four Governors based solely on their demonstrated ability in managing organizations or corporations, in either the public or the private sector, of substantial size (employing at least 50,000 employees). The amendment requires the President to consult with the Speaker and minority leader of the House and the majority and minority leaders of the Senate in selecting individuals to nominate to the Board.

The amendment also has a provision that one of the nine Governors must be chosen from among persons unanimously nominated by all labor unions recognized by law as collective-bargaining representatives for employees of the Postal Service in one or more bargaining units. The term of office for this Governor is three years (instead of nine).

Section 401 recognizes the bill vests enhanced powers and responsibilities in the Governors. A majority of current and former Board members have indicated support for well-defined qualification requirements for Board appointments. The qualification provisions in the bill are modeled on the appointment criteria for the Amtrak Board of Directors. Those Governors currently serving or nominated before enactment are not affected by this change.

#### *Sec. 402. Obligations*

Current law imposes a \$2 billion annual cap on borrowing for capital investments and a \$1 billion annual cap on borrowing for operating expenses. As recommended by the President's Commis-

108TH CONGRESS }  
2d Session

SENATE

{ REPORT  
108-318

POSTAL ACCOUNTABILITY AND  
ENHANCEMENT ACT

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 2468

TO REFORM THE POSTAL LAWS OF THE UNITED STATES



AUGUST 25, 2004.—Ordered to be printed  
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extent that they can be, should be reflected in the rates charged for those products.

The fact that the Committee believes the Postal Service can improve on its 60 percent attribution rate does not mean we believe the Postal Service should strive to attribute 100 percent of its costs, or any other arbitrary percentage. We also do not believe that the Postal Service should be forced to attribute such a large percentage of its costs to competitive products that those products will no longer be affordable and will no longer be made available to the customers who need them, particularly those customers living in parts of the country that are not well-served by the Postal Service's private sector competitors. We do believe, however, that Treasury, the Postal Service and the Postal Regulatory Commission should partner with private sector accounting experts and postal stakeholders in an open, transparent and continuous process to improve cost accounting and cost attribution at the Postal Service, especially as it applies to competitive products.

#### *International postal arrangements*

This legislation also makes it clear that the Department of State, not the Postal Service, is the federal agency that will take the lead in formulating U.S. foreign policy related to international postal services. The Secretary of State is given the authority to lead U.S. delegations in intergovernmental meetings devoted to postal matters and is barred from concluding agreements that, with respect to any competitive product, give preference to any entity, including the Postal Service. In carrying out his responsibilities during international postal negotiations, the Secretary is required to maintain appropriate liaison with other federal agencies, with the Postal Service, and with affected members of the public. He or she is also required to establish an advisory committee under the Federal Advisory Committee Act to help perform the necessary coordination and liaison with entities in the public and private sectors as U.S. foreign policy related to international postal services is developed. Before concluding an international agreement establishing a rate or classification for a postal product subject to regulation by the Postal Regulatory Commission, the Secretary will request the Commission to submit views on whether the terms of the agreement are consistent with the rate and classification system they will establish.

This language does nothing to prevent the Postal Service from entering into commercial or operational contracts related to providing international postal services. Any such agreement involving an agency of a foreign government, however, must be solely contractual in nature and must apply only to the Postal Service and those agencies party to the contract. No contracts entered into by the Postal Service will be treated as binding international law.

#### *USPS Board of Governors*

At present, the U.S. Postal Service Board of Governors is comprised of nine Governors who serve with the PMG and Deputy PMG on an 11 member Board of Governors. The Governors are appointed by the President and confirmed by the Senate. They serve staggered nine year terms, and by law, no more than five members may belong to the same political party. The President's Commis-

ties to federal laws prohibiting the conduct of business in a fraudulent manner. Second, the amendment subjects all Postal Service activities outside the postal monopoly to federal antitrust laws and unfair competition prohibitions and eliminates sovereign immunity protection from suits in Federal Court for violations of Federal law. Third, the amendment makes the Postal Service's Competitive Products Fund a "person" for purposes of federal bankruptcy laws. Fourth, the amendment requires the Postal Service to consider local zoning, planning, environmental, or land use regulations and building codes when constructing new buildings.

Section 409 as amended further requires the Postal Service to represent itself in most legal proceedings permitted by the amendment as well as in cases involving administrative subpoenas issued by the Regulatory Commission and appeals of decisions by the Commission or the Governors. The amendment requires that judgments arising out of violations of law involving competitive products be paid out of revenues earned from competitive products.

*Section 405—International postal arrangements*

Section 405 amends section 407 of title 39, United States Code. Paragraph 407(a) states that it is the policy of the United States to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes; to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services except where provision of those services by private companies may be prohibited by U.S. law; to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and to participate in multilateral and bilateral agreements with other countries to accomplish the objective.

Paragraph 407(b) provides that the Secretary of State shall be responsible for the formulation, coordination, and oversight of foreign policy related to international postal services. However, the Secretary cannot conclude any postal treaty or convention that would grant an undue or unreasonable preference for the Postal Service with respect to any competitive product. The Secretary of State shall coordinate with other agencies having authority vested by law such as the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative. In addition, the Secretary shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery issues; the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and the Postal Service and representatives of users and private providers of international postal and delivery services.

Paragraph 407(c) requires that, before concluding any treaty or convention that establishes a rate or classification for a market-dominant product, the Secretary of State shall request that the Postal Regulatory Commission submit its views on whether such a rate is consistent with section 3622.

Paragraph 407(d) states that the Postal Service can enter into commercial or operational contracts related to international postal



services as long as they are solely contractual and do not purport to be binding under international law. A copy of each contract shall be forwarded to the Secretary of State and the Postal Regulatory Commission.

Paragraph 407(e) requires that the customs laws of the United States be applied in the same manner to both shipments of the Postal Service and private companies and that to the extent practicable, the Secretary of State shall encourage governments of other countries to make available a range of nondiscriminatory customs procedures.

Subsection 405(b) permits the Postal Service to establish postage rates for international mail until regulations under section 3622 and 3633 are promulgated by the Postal Regulatory Commission for market-dominant products and competitive products respectively.

#### TITLE V—GENERAL PROVISIONS

##### *Section 501—Qualification requirements for Governors*

Section 501 amends section 202 of title 39. As revised, section 202 provides that the nine members of the Board of Governors shall represent the public interest generally. The amendment also adds a requirement that the Governors shall be selected by the President based solely on their demonstrated ability in managing large organizations or corporations, in either the public or the private sector. The amendment requires the President to consult with the Speaker and minority leader of the House and the majority and minority leaders of the Senate in selecting individuals to nominate to the Board. The term of office for Governor is five years instead of nine. Those Governors serving under an appointment made prior to enactment will not be affected, however, when that office becomes vacant, the appointment of any person to fill that office shall be made in accordance with this amendment. This section also establishes transition rules for vacancies occurring in terms of Governors incumbent as of the date of enactment.

##### *Section 502—Obligations*

Section 502 amends section 2005 of title 39 to delete specified limits on borrowing for capital improvements and for operational expense by the Postal Service. The Postal Service Fund's \$2 billion annual cap on borrowing for capital investments and \$1 billion annual cap on borrowing for operational expenses is modified to a \$3 billion total annual combined cap for both purposes.

##### *Section 503—Private carriage of letters*

Section 503 amends section 601 of title 39 to provide limited additional statutory exemptions to the postal monopoly. Subsection 503(b) provides that a letter may be carried outside the mail under three new circumstances: (1) when the amount paid to a private carrier is at least 6 times the rate then currently charged for the first ounce of a single-piece first-class letter; (2) when the letter weighs at least 12 and one-half ounces; and (3) when private carriage is within the scope of current Postal Service regulations that purport to suspend the operation of current law. By setting the limit at 6 times the first-class stamp price, the amended section

**UNITED STATES OF AMERICA**

**033**

**Resolution**

**Continuation after the Beijing Congress of the study on the mission, structure and management of the Union's work**

Congress,

In view of  
the report submitted by the Council of Administration on improving the management of the Union's work (Congrès-Doc 69),

Noting  
the amendment of the wording of the UPU's mission to include the right to a universal postal service (resolution CA 10/1998),

Considering  
the recommendations on the functioning of the Councils (proposals 020 and 024),

Considering also  
the recommendations on the status of members (proposals 15. 106.91, 15. 102.5 and 19. 5.1) and on increased participation of interested parties in the Union's work - government policies on postal issues (proposal 018),

Noting as well  
the progress in improving the programme and budget system and the continuing interest in alternative means for financing non-mandatory activities,

Recognizing  
the fundamental changes occurring in the postal and related physical delivery service sectors, such as the continuing liberalization of postal services, the increasing exposure of international postal services to competition, the new relationships emerging between postal and private delivery operators, and the opening of domestic markets to foreign service suppliers in accordance with principles derived from the World Trade Organization and the General Agreement on Trade in Services,

Convinced  
of the need to continue the review process and take new measures on an urgent basis, prior to the next Congress if necessary,

*Instructs*

the Council of Administration, in consultation with the Postal Operations Council and the International Bureau, to:

Is  
14.4.1999



- i continue seeking, as a matter of priority, ways of improving all aspects of the Union's structure and of the management of its work;
- ii continue reviewing the Union and its activities in a transparent manner, particularly as regards:
  - a the Union's mission, including its foundation in the universal service obligation and the single postal territory, and whether and to what extent it could be expanded to include promoting and encouraging communications between peoples by the efficient operation of the service of all operators, public and private, for cultural social and economic purposes;
  - b the governmental and operational roles and responsibilities of the bodies of the Union with respect to the provision of international postal services and whether and how they could be further clarified, distinguished and separately carried out;
  - c the UPU Secretariat and how the support it gives to the bodies of the Union could better reflect the differences between the governmental and operational responsibilities of the UPU and better serve the different needs of the two Councils;
  - d the UPU Acts and whether and how they could be further revised to reflect an expanded role for the UPU with respect to the activities of all operators, public and private, while continuing to provide a basis for member countries to ensure the provision of a universal service on a global scale;
  - e the system of financing the different types of Union activities and the possibilities for attracting new sources of revenue through optional financing arrangements;
  - f cooperation with the World Customs Organization, including the possibilities for extending simplified postal customs clearance procedures to similar shipments carried by all operators, public or private, and for revising the Kyoto Convention accordingly;
  - g competition between and among postal administrations and private delivery operators and how to ensure that the UPU can continue to support the provision of a universal postal service and the needs of developing countries while not giving undue or unreasonable preference to any group of operators;
- iii in a process open to input from the public and private sectors, formulate proposals for further reform based on the work described above:
  - a for implementation as soon as possible and prior to the next Congress, as appropriate;
  - b for submission to the next Congress for approval;
- iv invite member countries to convene an Extraordinary Congress in 2001, if necessary and appropriate, in order to implement reforms as soon as possible;
- v see to it that all UPU members wishing to do so have the opportunity to participate effectively in the work described above;
- vi ensure that other interested parties, including organizations representing users of postal services and private operators, are also consulted and given an opportunity to contribute.



## **HIGH LEVEL GROUP (HLG) ON THE FUTURE DEVELOPMENT OF THE UPU**

### **Subgroup 2 "Structure and composition of the UPU"**

(Berne, 13 July 2000)

**Results of the SG 2 brainstorming in select groups on 12 May 2000. Some possible alternative models for the UPU's organizational structure**

#### **Discussion paper by SG 2 Coordinator**

<b>1 Subject</b>  Presentation of the background and of five alternative models for the structure of the UPU	<b>References/Paragraphs</b>  §§ 1 to 36
<b>2 Decision expected</b>  Subgroup 2 may decide to single out one or more of the models to serve as the basis for the structure to be proposed	

### **I. Background**

1 The UPU is an intergovernmental organization, but most of its activities are operational. Where these operational activities serve to facilitate the free flow of mail between countries and to maintain the single postal territory, they are supported by all members. However, public Post Offices increasingly face competition from private sector distribution companies, particularly for cross-border traffic. As a result, Post Offices are becoming more competitive and are doing business not only on the basis of former alliances but also by making new contractual arrangements, whether with other Posts or other companies. Many Post Offices are also developing new, value-added products and services outside their traditional role and, again, these may be competing with the private sector. At the same time, in some member countries, Post Offices are even struggling to maintain those traditional services.

2 In this increasingly complex market, there is a lack of clarity and no clear consensus about exactly what the UPU is seeking to achieve. Is it a club for Post Offices and, as such, should it try to be involved in everything that Post Offices might do? Or should it be representative of the postal or distribution market as a whole (including the private sector) and provide a forum covering all that sector's interests? Perhaps it should address only the interests of governments in permitting the free flow of mail or, alternatively, perhaps it should define much more precisely



what "single postal territory" and "universal service" means in a UPU context and work in a more focused way to bring it about.

## **II. Roles and responsibilities of governments and operators**

3 Governments are responsible for the "Treaty" aspects including any legislative and regulatory obligations it imposes – ie, ensuring uninterrupted flow of mail, privacy of communications, universal service – are obligations on governments rather than on postal operators. Governments determine the extent to which they are prepared to bind themselves to the Treaty and who will provide the services needed to meet the obligations. Governments are also concerned about the broader development agenda.

4 The treaty should only seek to regulate those matters that Governments agree need to be regulated to ensure that treaty provisions are met. Governments reserve the right, for example, to define their own standards of universal service appropriate to their own needs. A Treaty commitment to the principle of universal service need not and should not bind a government to adopting standards it considers unnecessary for its circumstances.

5 Postal operators who deliver a universal service are responsible for the day-to-day provision of services, standards, and contracts within the broader framework of the international treaty and their respective domestic legislative obligations. Operators may choose to adopt standards, establish cooperative arrangements or make contractual undertakings and these should be seen as binding on the operators themselves but not on governments.

6 However, the widening scope of modern postal communications underlines the need for an "umbrella forum" to address issues relevant to a wider range of postal business beyond the universal service. It is also increasingly important that decisions, whether taken by governments on regulatory matters or by operators on standards, operating agreements, etc, can only be enhanced if they are taken in the context of all relevant interests.

## **III. Some models for the UPU to reflect this greater complexity**

7 Subgroup 1 of the High Level Group is addressing the role of the UPU and the outcome of its work will impact on the deliberations on structure. However, without pre-judging those results it is possible to consider a number of possible models for the UPU and consider how these might reflect the current reality.

8 The models set out below have been constructed to stimulate a discussion of possible options and, in particular, to address the view that there must be clearer separation between governmental and operational issues and that there must be a more structured forum for wider participation of other stakeholders. The elements of models are not necessarily mutually exclusive and members of the High Level Group might want to "mix and match" different elements. It is difficult to explore structural models in isolation from the mission or without considering how decisions are made or how the organization is financed. So what follows is not the whole story.

9 The purpose of this paper is not necessarily to have members of the High Level Group opt for one model or another but to have them identify those elements which they consider interesting and worth further exploration.

### *Model one: complete separation of governmental and operational issues into separate organizations*

10 This is a model adopted for airline industry issues, when ICAO represents the interests of governments and IATA the interests of the industry. The two bodies, whilst having close links, are

completely separate. They have separate membership, separate secretariats and separate programmes of activity.

11 Translated into UPU terms this would mean that the intergovernmental part of the organization would be confined only to:

- governmental issues;
- regulatory issues;
- promoting technical cooperation;

12 The "intergovernmental body" would have responsibility for treaty issues. It is likely that its focus would be primarily "legal" and "diplomatic" and it would certainly have an interest in the "development" dimension. Its role would be to ensure that the framework was in place to ensure the exchange of international mail but not become involved in the detail of how that happens. It would also have to examine the treaty or other legal/diplomatic implications of any international agreements made between operators in their own organization. Membership (and contributions) would be member governments, probably represented by their foreign affairs ministries or by ministries with responsibility for communication issues. It would probably meet only periodically to revisit the treaty and would require only a simple structure and a small secretariat. The "operations organization" would be likely to have observer status and be entitled to attend meetings and have access to papers produced by the "intergovernmental body". Similar status might also be accorded to other interested representative bodies.

13 The "operators' organization" would be a nongovernmental organization and membership might be open to either:

- all public postal operators;
- all universal service providers;
- all postal and courier companies;

14 The organization would be financed by members' subscriptions and would probably operate on more commercial lines than can the current UPU. Its structure and operations would be determined by its members in the light of their interests and resources. Similarly, the size and composition of the permanent secretariat would reflect members' requirements.

15 Whilst the numbers of operators' organization could agree standards or procedures between themselves, these would not be legally binding on member states unless endorsed by the intergovernmental body. It is likely therefore that there would be regular interaction between the two organizations on issues of mutual interest.

*Model two: complete separation of governmental and operational functions to create two distinct functions within the UPU*

16 A modified version of Model 1 might provide for two quite separately managed functions within a single UPU. This would require a much clearer separation of powers and funding.

17 Essentially, the framework would be as if there were two institutions (as above) each with its own managing body and permanent secretariat. There might be separate financial contributions with one part being attributed to the "intergovernmental" function and the other to the "operational" function. All members would be required to contribute to the "intergovernmental" element that might have similar role and functions as Model 1 (ie, a focus on legal/diplomatic and development issues).

18 Membership of the "operational" function might be completely (or partly) selective with members opting to participate as relevant to their needs (and obligations under the treaty) and with contributions being attributed to areas of participation. For example, there might be different groups such as, "Letter Post", "Parcels", "Financial Services", each electing a Council to manage



its work and supported by a secretariat team. Members to opt in only to those groups that directly concerned them. This structure would lend itself to the type of "cooperative" framework that currently exists for EMS. As above, whilst members of the operators organization could agree on standards or procedures between themselves, these would not be legally binding on member states unless endorsed by the intergovernmental body to which all would belong.

19 In this scenario, participation in the operational element might be open to all postal and courier companies, which would represent their institutions not their governments. So, for example, public post offices and other universal service providers would be likely to be the predominant members of a "Letter Post Committee", whereas other committees might have a wider range of representation.

20 Interested nongovernmental organizations/representative bodies might have observer status within the "intergovernmental" function. Representation in the operational function might be on a subscription basis.

21 Under this model, "Congress" would deal only with "intergovernmental" issues. An "all operators" meeting might be held in parallel or in association with Congress and prepare measures to put to Congress, but the meetings might have a quite different status and purpose.

*Model three: maintaining a single UPU but with a hierarchical structure separating governmental and operational issues*

22 This model assumes that the governmental and operational elements of the UPU are retained within one organizational structure. However, there is a clearer separation of powers, issues and responsibilities. This is reflected in a more hierarchical structure.

23 Between Congresses, the UPU might be managed by a Management Board, or Governing Council, that would represent governmental interests and oversee the treaty obligations of members and also consider administrative, diplomatic and development issues.

24 This model assumes that there would also be a number of operational groups established to deal with specific issues – as in the above example these might include "Letter Post", "Parcel Post", and "Financial Services". These operational groups might agree and publish standards or procedures to apply between themselves but these would not be regarded as binding on governments unless endorsed by the Governing Council (or Congress). However, except where government endorsement was specifically required, such issues would not normally be referred to the Governing Council or to Congress. They might have the status of technical agreements.

25 As above, there might be some element of self-selection in members' involvement in the operational groups and the appropriate earmarking of contributions/subscriptions. Similarly, there might be a specific IB team in support of each group and accountable to it. Some groups would operate on a cooperative basis.

26 Again Congress might be much more differentiated with a clear distinction between intergovernmental elements and operational issues and with a different status accorded to each element.

27 In this model, interested nongovernmental organizations or representative bodies might have observer status within the "intergovernmental" function. Representation in the operational groups might be from those public or private operators nominated by their governments. Representation of multinational companies in their own right, rather than as part of delegations, would have to be on a subscription basis.

*Model four: maintain two councils but with greater separation of powers and responsibilities*

28 This model assumes the continuation of the two Councils but each should have a more clearly defined role. The CA would oversee legislative, diplomatic, development and administrative issues and its membership would be drawn from government representatives. The POC would be responsible for overseeing operational issues concerning the universal service and its membership would normally include any universal service providers, whether public or private sector, although members would be able to nominate non universal providers as representatives, where appropriate to their national situation.

29 Each Council would have a more distinct identity/status and greater autonomy. This might be re-enforced by each having an allocated IB support team accountable to the Council. There might also be separate budget allocations for the two Councils. Whilst the POC members might agree and publish standards or procedures to apply between themselves, these would not be regarded as binding on member governments. Measures requiring government endorsement would be referred to the Council of Administration.

30 Congress might be much more differentiated with a greater distinction between intergovernmental elements and operational issues and with appropriate status accorded to each.

31 In this model, interested nongovernmental organizations or representative bodies might have observer status within the Council of Administration and appropriate deliberations at Congress. Representation in the operational groups might be from those public or private operators nominated by their governments. Participation in the POC by multinational companies in their own right, rather than as part of delegations, would have to be on a subscription basis and would be decided by the POC. Similarly observership or other participation in their own right by non-governmental organizations or representative bodies would be determined by the POC.

32 At regular intervals (at each Council?) – there would be a one (two?) day forum open to all interested parties – to discuss issues of common interest and review current activities and invite representations.

*Model five: continue to refine and develop the responsibilities of the councils but also develop a third dimension through an expanded advisory council*

33 Under this model, the CA would focus more on regulatory and administrative issues. The POC would be expanded to become more commercial in its functions and its membership would include any universal service providers whether public or private sector or any other operator nominated by members.

34 In addition, the Advisory Group would be expanded and would become almost a third Council. This would have membership from national and international associations of interested parties and representation from the CA and the POC. This membership might be nominated by individual governments or by the Councils. There would be a separate subscription for such membership and support from the IB. As with the Councils the Advisory Group could establish specialist subgroups. It would work on issues, have access to UPU documentation and have the right to make proposals to the Councils. One of its primary objectives would be to strengthen the communication and links with all stakeholders (including organizations, companies, Restricted Unions, etc).

35 Where appropriate, the two Councils and the Advisory Group would work on joint projects.

36 The organization of the IB would be restructured to reflect this new tripartite organization – as would Congress and the UPU timetable.

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